IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 732 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
DIVALIBEN BIJALBHAI & 2 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MR NN PRAJAPATI for Defendant(s) : 1,
None for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 07/08/2006

ORAL JUDGMENT

1. This appeal is directed against the judgment and award dated 19th January 1989 passed by Motor Accident Claims Tribunal, Amreli in MACT Case No.72 of 1987 whereby the Tribunal has awarded a sum of Rs.45000/- together with proportionate costs and interest at the rate of 6% per annum from the date of filing of the petition till payment.

2. The case of the original claimant was that Bijalbhai Panchabhai, the husband of the original claimant was travelling in a Rickshaw bearing No.GTS 8455 on 20th January

1986. The driver lost control of the rickshaw as a result of which Bijalbhai was thrown out from the rickshaw. Due to the injuries sustained, the said Bijalbhai expired later on and therefore the wife of the said Bijalbhai filed the aforesaid claim petition which was partly allowed.

4. Learned Advocate for the Appellant Insurance Company submitted that though the cover note was issued on 19.12.1985 the period covered by the policy was from 28.1.1986 to 27.1.1987 and the Tribunal has committed an error in holding that the policy covered the period of accident.

5. Learned Advocate for the appellant defended the case of the respondent and submitted that the Tribunal has considered all the aspects of the matter and no interference may be caused in this appeal.

6. On perusal of the record it is found that the accident has taken place on 20th January 1986. The insurance was effective from 28th January 1986 till 27th January 1987. The proposal was made on 19th December 1985. It is well settled law that merely because the proposal was made, that cannot be treated as an effective insurance. In fact the insurance begins only from 28th January 1986. It also appears that even though the accident took place after the proposal, the said fact was not brought to the notice of the Insurance Company. Under the circumstances the Insurance Company cannot be held liable to satisfy the claim.

7. Even otherwise the deceased was traveling in a goods

vehicle which was not meant to carry passengers. Therefore in view of the in the case of ***"Mallawwa and Others Vs. Oriental Insurance Co. Ltd. And Others"*** reported in 1999 ACJ 1 the Insurance Company is not liable to satisfy the claim of the claimant.

8. In the premises aforesaid, the judgement and award of the Tribunal qua the appellant is quashed and set aside. If the amount deposited by the appellant is lying in the Fixed Deposit, the same shall be refunded to the appellant, in which case it will be open to the original claimant to recover the said amount from the owner of the vehicle. However, if the amount has already been disbursed then the same will not be recovered from the claimant and it will be open to the Insurance Company to recover the same from the owner of the vehicle in question. Appeal is allowed to the aforesaid extent. No order as to costs.

[K.S. JHAVERI, J.]

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